

May 16, 1986

MEMORANDUM

SUBJECT: Scope of Farmer Exemption at 40 CFR §262.10(d) and 262.51

FROM: Mark Greenwood  
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RCRA Branch (LE-132S)

TO: Selden Prentice  
Assistant Regional Counsel, Region IX

This is to respond to your March 17, 1986 request for an interpretation as to whether the farmer exemption at §262.51 applies to aerial pesticide applicators or to farmers who dispose of pesticides that do not have specific disposal instructions on the label.

Section 262.51 exempts farmers disposing of waste pesticides from their own use from the hazardous waste management system provided certain measures are taken. The exemption would extend to commercial applicators who are applying in and disposing of pesticides on behalf of the farmer, because the commercial applicator would be acting as an agent of the farmer and because the waste pesticide would be from the farmer's own use (i.e., the pesticide was used on his land).

As long as the commercial applicator applies pesticide to a farmer's land by agreement with the farmer, and the restrictions of §262.51 are followed, the applicator would be covered by the exemption.

Among the restrictions to be followed is that directing the farmer (or his agent) to dispose of the pesticide residues "on his own farm". This is a key restriction for commercial applicators, since they would be able to dispose of pesticide residues only on the farm for which the pesticide was used. If the applicator disposes of residues from a pesticide used on one farm on a second farm or on an airfield, he is not covered by the exemption.

With regard to the §262.51 requirement that disposal on the farm be done in a manner consistent with the label instructions, I cannot agree with your view that the lack of specific instructions would void the exemption as to farmers or commercial applicators. There is nothing in the regulation requiring such specificity before the label would be deemed to contain disposal instructions. In fact, since the only disposal instructions in existence when the regulation was

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promulgated in 1980 were "general" instructions, it must be assumed that this type of instruction constituted "disposal instructions on the label." As we understand it, no pesticide label currently includes the kind of specific disposal instructions you believe should be imposed. If the "general" instructions are not viewed as satisfying §262.51 , then no pesticide wastes would be able to qualify for the exemption. A reading that renders this exemption a complete nullity cannot be the best construction of the regulatory language. Given this view, the language in the February 26, 1980 preamble to the regulation (45 Fed. Reg. at 12732) requiring disposal under Subtitle C if there are no disposal instructions must be read as applying only to labels with no disposal instruction whatsoever.

Thus, as long as the manner of disposal is not inconsistent with the label instructions, the fact that the label does not contain specific disposal instructions tailored to the particular pesticide does not otherwise affect the applicability of the exemption.

cc: David Bussard